



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MND, FF

Introduction

This hearing dealt with Cross Applications for Dispute Resolution.

The Tenant applied for a monetary order to recover all or part of the security deposit and to recover the filing fee for the Application.

The Landlords applied for a monetary order to keep all or part of the security deposit and for damage to the rental unit and to recover the filing fee for the Application.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form, and to make submissions to me.

Issue(s) to be Decided

Is the Tenant entitled to a monetary order under sections 38, 67, and 72 of the *Residential Tenancy Act*?

Are the Landlords entitled to a Monetary Order under sections 38, 67 and 72 of the *Residential Tenancy Act*?

Background and Evidence

This tenancy started on June 15, 2009, ended on January 31, 2011, monthly rent started at \$1,400.00, ending rent was \$1,450.00 and the Tenant paid a security deposit of \$700.00 on June 11, 2009.

The Tenant supplied evidence and gave affirmed testimony that the Landlords were provided the Tenant's written forwarding address on January 31, 2011, the day the Tenant and the male Landlord met at the rental unit for the final time. I note that both parties signed the document, which also in part, stated "There is no deficiencies or damages on this property."

The Tenant testified that the Landlords have not returned his security deposit despite having made requests for the same. The Landlords confirmed they have not returned any or all of the security deposit and learning of the Tenant's forwarding address on January 31, 2011.

The Tenant stated there is no move-in or move-out condition inspection report.

The Landlord submitted that the Tenant caused water damage to the wood flooring and to the kitchen back splash and caused a chip in the cook top.

The Landlord also submitted that the rental unit required six hours of cleaning, that two light bulbs needed replacing and that it was necessary to replace the key FOB as the Tenant did not return the key.

In support of their claim for \$2,183.86, the Landlords submitted a document entitled "New Home Walk-through Checklist ("Checklist"), dated April 29, 2009, copies of photos, letters from the strata corporation and estimates for the alleged damage and cleaning.

The Landlord acknowledged that there was no move-in or move-out condition inspection report in conformance with the Act, but submitted that the Checklist indicated that there was no damage to the rental unit. Upon query, the Landlord admitted that this was a walk through for their benefit with the original seller of the rental unit, after their purchase. The Tenant was not present and did not begin his tenancy until June 15, 2009.

Upon query, the Landlord admitted that they have not incurred any expenses for the rental unit since the Tenant left and have not repaired the damage.

The Landlord submitted that the January 31, 2011, letter signed by the Tenant and the male Landlord indicated a chip in the cook top.

The Tenant denied causing any damage to the rental unit and provided a detailed written response to the Landlords' letter outlining a list of alleged damages to the rental unit. The Tenant provided photos of the rental unit after his move out and cleaning and pointed out that the Landlords have provided only estimates of the alleged costs. The Tenant further submitted that he did not damage the rental unit in anyway and that the Landlords are in the process of selling the rental unit, in the same condition as at the end of the tenancy, with no repairs being made.

Analysis

Based on the testimony, evidence and a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim as follows:

First proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly** proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Tenant's Application:

In this case the evidence and undisputed testimony supports that the Tenant provided the Landlords with his written forwarding address on January 31, 2011.

The Landlords did not apply for dispute resolution until March 9, 2011, do not have an Order allowing them to keep any portion of the security deposit and do not have the Tenant's written consent to retain the security deposit.

Section 38(1) of the *Act* stipulates that if within 15 days after the later of: 1) the date the tenancy ends, and 2) the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit, to the tenant with interest or make application for dispute resolution claiming against the security deposit. In this case the Landlords were required to return the Tenants' security deposit in full or file for dispute resolution no later than February 15, 2011.

Based on the above, I find that the Landlords have failed to comply with Section 23 (1) and 38(1) of the *Act* and that the Landlords are now subject to Section 38(6) of the *Act* which states that if a landlord fails to comply with section 38(1) the landlord may not make a claim against the security and pet deposit and the landlord must pay the tenant double the security deposit. I find that the Tenant has succeeded in proving the test for damage or loss as listed above and I approve his claim for the return of his security deposit.

I find that the Tenant has succeeded with his application and I award recovery of the \$50.00 filing fee.

Monetary Order – I find that the Tenant has established a monetary claim as follows:

Doubled Security Deposit owed 2 x \$700.00	\$1,400.00
Filing Fee	<u>50.00</u>
TOTAL AMOUNT DUE TO THE TENANT	\$1,450.00

The Tenant is hereby granted a monetary **Order** in the amount of **\$1,450.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Landlords' Application:

Section 23 and 35 of the Act *requires* a landlord to provide opportunities for a move in and move out condition inspection and to complete an inspection report in accordance with the Act and regulation.

In the absence of the inspection reports, I find the Landlords have not submitted proof of the condition of the rental unit either before or after this tenancy and therefore I find that the Landlords have **not** met the first two steps required to prove a monetary claim.

In addition, the Landlords confirmed that they have not made any repairs or expended any money for alleged damage caused by the Tenant. Therefore I find that the Landlords have not met any step required to prove a monetary claim.

I therefore **dismiss** the Landlords' Application without leave to reapply.

Conclusion

The Tenant is granted a monetary Order in the amount of **\$1,450.00**.

The Landlords' Application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: June 07, 2011.

Residential Tenancy Branch